IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

<<>>

:: **J U D G M E N T** ::

Sanwal Singh Vs. Samrath Singh & Ors.

S.B. CIVIL MISC. APPEAL NO.56/1995.

Against the award dated 15.09.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.22/1991.

Date of Judgment ::: 25th April 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Panwar with
Mr. S.K. Sankhla, for the appellant.
Mr. Sanjeev Johari, for the respondent No.3.
Mr. B.S. Bhati, for the respondent No.4.

....

BY THE COURT:

The claimant has preferred this appeal being aggrieved of the award dated 15.09.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.22/1991 rejecting his claim for compensation.

The claimant-appellant submitted the claim application with the averments that on 24.08.1990, he was travelling from

Devikot to Barmer in a bus bearing registration No. RNP 1173 belonging to the non-applicant No.4, Rajasthan State Road Transport Corporation ('the Corporation') and being driven by the non-applicant No.5 Girdhari Lal; that at about 04:35 p.m., near Agoria Dhora while the bus was proceeding towards Barmer, from the opposite direction the non-applicant No.1 Samrath Singh brought driving rashly and negligently a truck bearing registration No. RJC 4903 belonging to the non-applicant No.2 Rakesh Construction Company and insured with the non-applicant No.3 United India Insurance Co. Ltd.; that the truck hit against the rear right hand side of the bus; and that the claimant sitting at such rear portion of the bus sustained several injuries and his right palm was chopped off. Detailing out the loss suffered by him for loosing right palm and four fingers and for other injuries, the claimant submitted that he was 25 years of age and was earning Rs.1,500/- per month as carpenter and was totally deprived of his earning capacity; and sought compensation in the sum of Rs.5,05,500/- towards pecuniary loss, treatment expenditure and pain and sufferings.

The claim application was put to contest by the driver of the bus, non-applicant No.5 with the submissions that upon noticing the oncoming truck, he took the bus down the road but the non-applicant No.1 hit at the rear of the bus and the

claimant sustained injuries for keeping his hand out of the window. The said non-applicant, driver of the bus, maintained that the accident occurred for negligent driving of the truck and the claimant sustained injuries for his own fault. On the other hand, owner of the truck, non-applicant No.2 alleged that the bus was being driven at a brisk speed and the claimant kept his hand out of the window; that the truck was being driven by the non-applicant No.1 with all care and caution but speed of the bus led to some scratches and, for having been placed out of the window, the claimant's hand too got some bruises that healed after treatment. The non-applicant No.3, insurer of the truck again asserted that the accident occurred for negligence of the bus driver and that the claimant sustained injuries for his own negligence.

It may be pointed out that the Tribunal allowed compensation for 'No Fault Liability' under Section 140 of the Motor Vehicles Act in the sum of Rs.12,000/- by its order dated 06.01.1992 made in connected Misc. Case No.14/1991 against the persons related with the truck and the said amount was deposited by the insurer on 21.03.1992 and was paid to the claimant on 27.03.2002.

The Tribunal framed the following issues for determination of the questions involved in this case:-

"1. आया दिनांक 24.8.90 निशान ट्रक आर जे सी 4903 के चालक समरथसिंह ने उक्त वाहन को तेज रफ्तार व लापरवाही से चलाकर बस संख्या आर एन पी 1173 के आगोरीया धोरा चढाई चढते बाड़मेर जैसलमेर रोड़ पर दुर्घटनाकारित की । जिससे प्रार्थी सांवलसिंह का जीवणा हाथ का पुणचा कट कर अलग हो गया ।

प्रार्थी

2. आया प्रार्थी क्लेम प्रार्थना पत्र के पद सं 23 में बताये अनुसार मुआवजा राशि रूपये 5,05,500 पाने का अधिकारी है - प्रार्थी

3. आया प्रार्थी सांवलसिंह ने चलती बस में हाथ बाहर रख कर खुद लापरवाही बरती है, इसलिए खुद की गल्ती के कारण दुर्घटना की क्षतिपूर्ति पाने का प्रार्थी अधिकारी नहीं है -

विप्रार्थी

4. सहायता"

In oral evidence, the claimant examined himself as AW-2; Dr. Rajendra Kumar Maheshwari, the Medical Jurist at Government Hospital, Barmer as AW-1 in relation to his injury report Ex.1, and disablement certificate Ex.2; Gamer Singh, a co-passenger in the said bus as AW-3; and Luna Ram, AW-4 in relation to his earnings Rs.50/- per day as carpenter. The non-applicants examined only one witness Dr. Mahesh Chandra Purohit, an alleged insurance investigator as NAW-1. The claimant produced his injury report (Ex.1), his disablement certificate (Ex.2), and his bills of medical expenditure (Ex.3 to Ex.16). Apart from these documents

marked exhibits, the claimant has produced on record the certified copies of police investigation papers; and, as dilated hereafter, such relevant and undeniable documentary evidence, having direct bearing on the questions involved in the case, and even though not requiring formal proof; and even those carrying the endorsement of admission on behalf of the non-applicants have simply been ignored by the Tribunal. The non-applicants produced a copy of the statement of the claimant allegedly recorded by the investigator as Ex. NA-1; three photographs of the claimant as were snapped by the said investigator with their negatives as Ex. NA-2, Ex. NA-3 and Ex. NA-4; and a copy of his investigation report Ex. NA-5.

After hearing the parties, the Tribunal has proceeded to decide the claim application by its award dated 15.09.1994. Taking up issues Nos. 1 and 3 together, the Tribunal has referred to the statements of the claimant, AW-2 Sanwal Singh and a co-passenger with the claimant in the bus AW-3 Gamer Singh and has observed that : (a) AW-3 Gamer Singh has alleged the truck having approached in an uncontrolled manner and at a brisk speed and having hit the right hand rear corner of the bus causing injuries to Sanwal Singh but Sanwal Singh has not stated in his deposition that at the time of accident, the non-applicant No.1 was driving the truck at a

high speed or negligently and because of which occurred the accident; (b) that the claimant admitted in his cross-examination that he was sitting in the middle of the seat meant for three persons and, therefore, it was not probable that the accident would occur only with the claimant but were more likely to happen with the person sitting by the window; (c) that despite sitting in the middle of the seat, the claimant kept his hand either on or out of the window and, therefore, when the two vehicles crossed very near to each other, his hand was chopped off; (d) that the kind of injuries sustained on the hand of the claimant were clearly indicative of the fact that his hand was either out of the window or was kept on the window and the accident occurred because of his negligence only. Hence, the Tribunal has decided issues Nos.1 and 3 against the claimant-appellant; and has not made any assessment of loss for its reasoning that there was no negligence on the part of the truck driver and the claimant himself was responsible for his injuries. In this manner and on these considerations, the claim application has been rejected altogether.

Assailing the award aforesaid, learned counsel Mr. Rajesh Panwar appearing for the claimant-appellant has strenuously contended that on the facts established on record, it is apparent that the claimant has suffered injuries leading to deprivation of his livelihood due to the accident that occurred

because of two vehicles hitting against each other and the Tribunal has been in error in putting the entire blame on the claimant and in assuming that he kept his hand protruding out of the window; that there was no contribution of the claimant to the accident or to the injuries and the fact that he kept his hand out of the window is not established on record; that the non-applicants having not produced the relevant witnesses, i.e. the drivers of the respective vehicles, adverse inference ought to have been drawn against them and the application for compensation could not have been rejected; that reasonable compensation deserves to be awarded to the claimant when he has suffered permanent disablement upon loosing four fingers and palm of his right hand and has suffered loss of earning capacity.

Learned counsel Mr. B.S. Bhati appearing for the Corporation while opposing the submissions made on behalf of the appellant-claimant has urged that even from the evidence led by the claimant, it is apparent that there was no contribution to the accident on the part of the driver of the bus and award of compensation, if any, ought to be made only against the persons related with the truck in question. Learned counsel Mr. Sanjeev Johari appearing for the insurer of the truck has, on the other hand, submitted that the accident having occurred exclusively for the fault of the

claimant himself is apparent from the fact that only his hand got injured though he was sitting in the middle of a three-persons' seat; that the claimant could have sustained such injury only when he kept his hand hanging out of the window inviting danger; that there has not been any loss of earning capacity because the very suggestion of claimant's earning as carpenter has been found incorrect by the investigator of the insurer.

Having given a thoughtful consideration to the submissions and having examined the record, this Court clearly of opinion that the Tribunal has been in error in rejecting the claim application and in not awarding just compensation to the appellant.

The appreciation of material available on record by the learned Judge of the Tribunal has been, to say the least, sketchy and rather superficial. The learned Judge has merely picked up the facts that the claimant was sitting in the middle of a three-person seat and he alone got injured on his right hand; and has, thus, concluded that the claimant was solely responsible for the mishap. The fundamental fact directly available on record that the accident occurred for the truck hitting at the rear right hand side of the bus has altogether been omitted from consideration, vitiating the entire award.

It is noticed that in this case, the Tribunal framed the issues on 23.10.1991 and on that date and so also on the next date, i.e. 28.11.1991, admission/denial on the documents produced by the parties was carried out. Learned counsel appearing for the non-applicants, driver of the bus and owner of the truck, specifically admitted the certified copies of first information report, available at page C5/2; charge-sheet filed against the truck driver Samrath Singh, available at pages C5/4 to C5/7; supardginama of the vehicles at pages C5/8 and C5/9; insurance cover note at page C5/10, certificate of registration of the bus at page C5/11; and certificate of registration of the truck at page C5/12. It is rather strange that despite such documents being the certified copies from the relevant record and having been admitted by the non-applicants, the Tribunal has not marked them as exhibits and then has chosen to ignore them altogether. Another certified copy is that of the site inspection memo, as available on record at pages C5/14 to C5/16. This document carries different endorsement of admission/denial. While the counsel for non-applicant No.5 (driver of the bus) has admitted the same, counsel for the vehicle owner has put his denial at page C5/16 and so also at page C5/14 but then, at the very page C5/14, has put admission too. In the face of such state of record, this Court is of opinion that such documents did not

require formal proof and the facts directly available therefrom could not have been ignored.

It remains an admitted position that the FIR was lodged by the bus driver with the specific allegation that the truck hit against the rear right hand side of the bus that caused the injuries to the claimant Sanwal Singh chopping off his right palm; and that the investigating agency submitted charge-sheet against the truck driver after investigation for offences under Sections 279, 337 and 338 IPC. The certified copy of site inspection memo (at pp. C5/14 to C5/16) obtained from the record of Criminal Case No.833/1990, is an admitted document on the part of the bus driver and admission/denial on the part of the truck owner carries ambiguity, as noticed above. This document, being a certified copy from court record of the report prepared by the investigating agency in discharge of its official duties, neither required formal proof nor could have been ignored from consideration in this vehicular accident compensation case.

The site inspection memo, while reporting on respective position of the two vehicles, clearly records about a bend on the frontal right hand side of the truck that carried blood stains too; about shattered pieces of the window-glass of the bus scattered all over the body of the truck; and about several pieces of the body of the bus lying at the site with severed

right palm and four fingers of the claimant. There remains no doubt that the truck in fact hit against the body of the bus on its rear right hand side and this impact caused injuries to the claimant. It has been distinctly reported in the said site inspection memo drawn on 24.08.1990, i.e. the very day of the incident, inter alia, that,-

> "जाय वाका थाना शिव से करीब 10 K.m की दूरी पर सोनारों की मगरी के धोरा पर सरहद आगोरियां पर स्थित है । घटना स्थल आम रोड़ राष्ट्रीय मार्ग पर मार्क "A" स्थान पर जाय वाके है । जिस स्थान से बीस फीट की दूरी पर ट्रक R.J.C. 4903 का पिछला हिस्सा हैं जिसके पास में पिछले दाहिने टायर के पास मजरूब सावलसिंह S/o जबरसिंह राजपूत सा0 मूलाणा के दाहिने हाथ की हथेली मय चार अंगूली कटी हुवी पड़ी हैं उसके ऊपर बस R.N.PAGE 1173 का खिड़की का पिछला कांच का फ्रेम टूटी हुवी पड़ी हैं मार्क "A" स्थान के पास बस R.N.PAGE 1173 के खिड़की की रबड़ की गोट व चन्दर वगेराह टूट कर बिखरे हुवे पड़े है । ट्रक निशान R.J.C. 4903 के डाला का अगला दाहिनी तरफ का हिस्से की चाम्बी मुड़ी हुवी है व डाले के खून के छीटें लगे हुवे है व बस की खिड़की के कांच के टुकडें बोडी पर जगह बजगह बिखरे पड़े है ।"

It has been stated by Sanwal Singh, claimant that the accident occurred for the truck hitting against the bus thus:

> "रास्ते मे बस जब आगोरियां की चढाई पर आ रही थी, तब बाड़मेर की तरफ से एक निशान गाडी आई उसने टक्कर मारी । मैं उस बस में जीवणी तरफ बैठा था जो पीछे की तरफ बैठा था । टक्कर से मेरा जीवणा हाथ कट गया और हाथ की चारों अंगुलियां हथेली आधी सहित नीचे गिर गया ।"

He has stated in his cross-examination thus:

> "दुर्घटना दोनो गाडियों की आपस में टक्कर होने से हुई थी, जिसमें मैरे हिसाब से गलती निशान गाडी वाले की थी । मैंने निशान गाडी को आते हुए देखी थी । मेरा हाथ बस से बाहर नहीं था क्योंकि मैं तीन की सीट में बीच वाली सीट पर बेठा था । यह बात सही है कि मैंने दोनो गाडियों के ड्राइवरो की गलती मान कर यह क्लेम का दावा पेश किया था ।"

The witness Gamer Singh has also pointed out about the truck having hit at the rear of the bus. The said witness AW-3 Gamer Singh stated thus:

> "..... तब बाडमेर से एक निशान ट्रक आगोरियां के पास असन्तुलित होती हुई, तेज गति से आई, बस के ड्राइवर ने निशान गाडी को पूरी साइड दी, बाद में पीछे से आवाज आई और साथ में चिल्लाने की आवाज भी आई, । निशान गाडी ने बस के पिछले हिस्से में टक्कर मारी जिसके कारण सांवलसिंह के चोटे आई, सांवलसिंह का अंगूठा बचा बाकी का पूरा हाथ कट गया, पास बैठे हीरसिंह के भी चोटे आई ।"

The non-applicants have chosen to produce the investigator of the insurer as NAW-1 and his report dated 06.08.1992 as Ex.NA-5 in support of their case. The fact is admitted even in this report Ex. NA-5 that the truck collided at the tail end of the bus; and the said investigator has suggested that:

> "Both drivers are equally responsible."

The fact that four fingers and a larger portion of the palm of the right hand of the claimant got chopped off in the

accident has been noticed by the said investigator too and resultant physical condition of the claimant is distinctly seen in his photographs Exhibits NA-2 to Exhibits NA-4. Though the testimony of such investigator is hardly of any relevance so far rebuttal of the facts stated by the claimant are concerned, the fundamental fact that the accident occurred for collision of the two vehicles remains undeniable.

The learned Judge of Tribunal has been in absolute error in simply picking up a fact from the testimony of the claimant that he was sitting in the middle of the three-persons' seat and in assuming that his hand was out of the window and he alone got injured. The learned Judge has obviously omitted to consider that the fact that the claimant kept his hand out of the window is not established from any reliable evidence available on record; and the possibility of his having kept his hand hanging out of the window is effectively ruled out when it is established that the claimant was sitting in the middle of the three-persons' seat. The assumption drawn by the learned Judge about the claimant having probably kept his hand out of window does not appear plausible even as a conjecture what to say of logical inference. On the contrary, from the facts available on record, the only reasonable possibility could be, as rightly pointed out by the learned counsel for the claimant, that the claimant kept his right arm

stretched on the back rest of the seat, perpendicular to his body and behind the person sitting by the window; and in the process his right hand was at or around the sill or frame of the window; and got chopped off when the truck hit the window.

The fact that the truck hit the window of the bus by the side of the claimant as categorically stated by the witnesses is definitely corroborated by the site inspection memo. The non-applicants have failed to produce any cogent rebuttal and from the evidence, oral and documentary, as available on record the only logical conclusion possible is that the portion of the palm of the claimant got chopped off when the truck crashed into the bus at its rear right hand side; and it does not appear to be a case of the claimant contributing to his injury at all. Then, an adverse inference is required to be drawn against the non-applicants for their omitting to produce the drivers related with the vehicles in evidence. The driver of the truck was the most material witness to say if the truck did not hit the bus or about his being not at fault or about any contribution of the claimant to the accident or injuries.

So far the two vehicles are concerned, it is again noticed that the claimant and his witness have specifically asserted that the accident occurred for the mistake and negligence of the truck driver; the police had also filed challan against the truck driver after investigation; and the fact remains that the

truck hit against the rear of the right hand side of the bus. There could have been some consideration on the possibility of the bus driver being at fault if anything was shown on record that he omitted to give reasonable space to the truck or that he put rear of the bus at an angular position on the road; but such facts, if at all, could have been established only by the persons related with the truck in question, particularly by producing the truck driver in evidence. They have not. In view of the specific testimony of AW-3 Gamer Singh, an eye-witness that the bus driver had provided complete side to the truck coupled with the fact that the truck hit only at the tail end of the bus, this Court has no hesitation in coming to the conclusion that the accident causing extensive injuries to the claimant occurred for the negligence of the truck driver only and the persons related with the truck remain liable for the loss caused to the claimant.

The findings on issues Nos. 1 and 3 are reversed and it is held that the accident was caused by rash and negligent driving of Nissan truck RJC 4903 that caused injuries on the right hand of the claimant chopping off a large portion of his palm with four fingers; and the claimant has not contributed to the accident or to the injuries; and the respondents Nos. 1 to 3, driver, owner and insurer of the truck in question are liable for payment of compensation to the claimant-appellant.

With reversal of findings on issues Nos. 1 and 3, the claimant is entitled to receive compensation from the respondents Nos. 1 to 3. The Tribunal has chosen not to assess the quantum of compensation though involved in issue No.2; rather the Tribunal has assumed that the finding on negligence of the claimant was a fait accompli. However, for the accident having occurred back on 24.08.1990, and for the evidence available on record, it appears appropriate to quantify reasonable compensation payable to the claimant instead of relegating the parties to the Tribunal only for the purpose of quantification of compensation.

It remains undeniable that the accident caused serious bodily injuries on the person of the claimant of the nature that he has totally been deprived of a larger portion of his right hand with four fingers and about half of the palm having been severed; and he suffered a lacerated wound on the forehead too. The condition of the claimant is distinctly visible in the photographs produced by the insurer Exhibits NA-2 to NA-4. So far his income is concerned, the claimant suggested that he was earning Rs.50/- per day in wages as a carpenter; and it has been suggested by the investigator of the insurer that the claimant was not engaged in any such work and was earning wages at about Rs.25/- per day. The evidence of the investigator of the insurer is, again, irrelevant for quantification

of compensation. However, scanning through the record this court has noticed a seriously questionable methodology adopted by the insurer where its alleged investigator purportedly recorded a so-called statement of the claimant while visiting his village; and then it was suggested that claimant was ready to compromise at a sum of Rs.30,000/-. The loss of life or limb is not available for a bargain in this manner at the instance of the insurer; and the methods as adopted by the insurer in this case could only be disapproved.

The claimant was 25 years of age and there appears no reason not to accept his earning at Rs.50/- per day in the year 1990 whether as a labourer or as a carpenter. The loss of four fingers and palm of the right hand deserve to be taken of the loss of 50% of earning capacity with reference to item No.7 of Part II of Schedule-I to the Workmen's Compensation Act, 1923.

This Court is of opinion that the claimant is entitled for compensation for loss of earning capacity minimum at 50% of his wages at Rs.1,500/- per month, i.e. Rs.750/- per month, leading to multiplicand of Rs.9,000/- per annum; and with application of multiplier of 17, his pecuniary loss on this count comes to Rs.1,53,000/-. The claimant deserves to be allowed Rs.1,500/- towards treatment expenditure with reference to the bills produced by him for about Rs.1,263/-. The claimant

deserves to be further allowed Rs.5,500/- towards diets, attendants and other ancillary expenses related with treatment and so also loss of earning during the treatment period. The claimant has lost four fingers and palm of his right hand at the age of 25 years and it appears in the interest of justice that the claimant be allowed another amount of Rs.50,000/- towards non-pecuniary loss inclusive of loss of amenities of life and pain and sufferings. The claimant is, therefore, entitled to compensation in the sum of Rs. 2,10,000/- (1,53,000 + 1,500 + 5,500 + 50,000).

Though having regard to the present prevalent rates of interest, the claimant would have been allowed interest at the rate of 6% per annum but looking to the facts and circumstances that if the reasonable amount of compensation was allowed at the relevant time, higher rate of interest was available and that the claimant has suffered the litigation for about 16 years, it appears appropriate to award interest @ 7.5% per annum from the date of filing of the claim application.

As a result of the aforesaid, this appeal succeeds and is allowed; the impugned award dated 15.09.1994 is set aside; the claim application submitted by the claimant is partly allowed and an award of compensation is made in his favour in the sum of Rs.2,10,000/- against the respondents Nos. 1 to 3. After adjustment of Rs.12,000/- already received by him on

27.03.1992, the claimant shall be entitled for interest on the remaining amount of award @ 7.5% per annum from the date of filing of the claim application, i.e. 25.02.1991.

The amount payable under this award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal. Upon deposit, 75% of the amount shall be placed in a Monthly Income Scheme of Post Office for a minimum period of 5 years in the name of the claimant; and the remaining may be disbursed through savings bank account.

There shall be no orders as to costs.

(DINESH MAHESHWARI), J.

Mohan/